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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Refund Section - PATENT & TRADEMARK
Office of Finance

In Re Application of: Osamu NAGAI et al

Serial No.: 10/030076

Filed: January 10, 2002

Title: GASKET FOR FUEL BATTERY AND
METHOD OF FORMING THE SAME

REQUEST FOR REFUND

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In the above identified case, deposit account 06-1358 has been improperly debited.

By this paper, a credit to deposit account 06-1358 is requested. An explanation of the debiting error is set out below, and copies of all documents in support of this request are attached.

Explanation of Error:

- Large Entity fee charged to Small Entity
- Fee should not have been charged to PTO account because it was paid by check
- PTO miscalculation
- Unknown and unidentifiable PTO charge

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Type of Charge and Amount of Refund Requested:

Extension of Time \$ 1020.00

TOTAL REFUND REQUESTED \$ 1020.00

Comments:

On July 27, 2004 a Petition was filed requesting a refund of three months Extension of Time payment of \$950. On May 27, 2005 a Decision on the Petition was received confirming a refund of \$950 was applicable. However, on October 14, 2005, a further \$1020 charge for three months Extension of Time was applied to undersigned counsel's deposit account 06-1358. Since the further fee of \$1020 is a PTO error, it is requested that a refund of \$1020 and \$950 totaling \$1970 be applied to undersigned counsel's deposit account 06-1358.

Attached Documents:

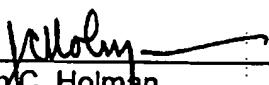
Deposit account statement (highlighted)

Copy Decision on Petition confirming refund was appropriate

Respectfully submitted

JACOBSON HOLMAN PLLC

By _____


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I.D.: JCH/dls
Folio: P67506US0
Date: January 23, 2006



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JCH

P67506 US

UNITED STATES PATENT AND TRADEMARK OFFICE

DJC 6/3/05



TC 6-3-05

Mailed: 5/27/05.

In re application of

Nagai et al.

Serial No. 10/030,076

Filed: January 10, 2002

For: GASKET FOR FUEL BATTERY AND METHOD OR FORMING THE SAME

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DECISION ON PETITION

This is a decision on the PETITION UNDER 37 CFR 1.181 TO DIRECT THE EXAMINER ISSUE A NEW NON-FINAL OFFICE ACTION.

The instant application is a National Stage Application entry of PCT/JP00/03853 filed on January 10, 2002. On February 20, 2004, a non-final office action was mailed to Applicants. Applicants contacted the examiner on June 10, 2004 and pointed out that two claims were not addressed in the office action. Apparently, a preliminary amendment was lost or misplaced by the office and was never processed. On July 21, 2004, applicants again contacted the examiner. The examiner stated that no new office action would be sent out and that Applicants should respond to the outstanding office action. Applicants file a response to the outstanding office action on July 27, 2004. The instant petition was timely filed simultaneously with this response formally requesting that a new non-final office action be prepared and mailed. In response to the amendment, the examiner required a restriction requirement on August 12, 2004. In the office action, it was stated that any subsequent action would be made final because Applicants had already received a first action on the merits. In an interview on August 30, 2004, the examiner's supervisor told Applicant's representative that the restriction would rescinded in order for a decision to be made with regard to the instant petition.

The instant petition requests that a new non-final office action addressing all of the pending claims be prepared. It is also requested that applicants be given a refund of the extension of time fee paid on July 27, 2004.

DECISION

The request for a new non-final office action to be mailed will be addressed first. Applicants have submitted a copy of the post card receipt from the office dated January 10, 2002. This receipt lists the various papers that were hand carried to the office. Among the papers listed is a preliminary amendment and an Article 19 amendment. Applicants faxed copies of the post card receipt and the amendments filed with the application to the examiner on June 10, 2004. It is clear from these documents that the original papers were either lost or misplaced by the office. It

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is unclear as to why the examiner would not immediately issue a new non-final office action due to error on the part of the office.

Next, the request for a refund of the extension of time fee will be addressed. As previously stated, the examiner should have issued a new non-final office action. Applicants should not have been made to file a response to the office action mailed February 20, 2004 because said action was based on an incomplete copy of the claims. The request for a refund of the fees is appropriate.

Lastly, while not specifically addressed in the petition, the restriction requirement made by the examiner on August 12, 2004 will be reviewed. Although the examiner's supervisor rescinded the requirement in an interview on August 30, 2004, it is noted that the restriction requirement was improper on its face. The examiner required a species election and an election between numerous groups under 35 USC 121. It is noted however, that the instant application was filed under 35 USC 371. National stage applications do not fall under 35 USC 121 but rather lack of unity practice should be followed.

Accordingly, the petition is GRANTED. The examiner is directed to prepare a new non-final office action addressing all of the pending claims on the merits. In addition, applicants are to be refunded the extension of time fee paid on July 27, 2004.

JM Stone

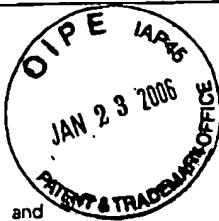
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DATE POSTED MO. DAY YR.	CONTROL NO.	DESCRIPTION (Serial, Patent, TM, Order)	DOCKET NO.	FEES CODE	CHARGES/ CREDITS	BALANCE
10 4 05	5	2947057		6214	100.00	13034.74
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10 24 05	6	10509950	P67772US1	1617	-130.00	11004.74
10 27 05	146	78695796	MGG	8513	50.00	10954.74
10 27 05	261	29234544	P70621US0	1806	180.00	10774.74
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Adjustment date: 03/29/2006 EEKUBAYI
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